

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TRI-CITY RAILROAD COMPANY, LLC, a  
Washington limited liability company

Plaintiff,

vs.

PREFERRED FREEZER SERVICES OF  
RICHLAND, LLC, a Delaware limited liability  
company

Defendant.

NO. 2:19-cv-00045

**DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S  
AMENDED COMPLAINT**

**COUNTERCLAIM OF DEFENDANT  
PREFERRED FREEZER SERVICES OF  
RICHLAND, LLC**

Defendant Preferred Freezer Services of Richland, LLC ("Defendant") admits, denies, and alleges as follows in response to the Amended Complaint of Tri-City Railroad Company, LLC ("Plaintiff"):

**ANSWER**

1. Defendant lacks information and belief at this time sufficient to admit or deny the allegations of Paragraph Nos. 1.1 and 1.2, and on that basis denies them.

2. Defendant admits the allegations of Paragraph No. 1.3.

3. Defendant denies each and every allegation of Paragraph Nos. 1.4 and 1.5.

DEFENDANT PREFERRED FREEZER SERVICES OF  
RICHLAND, LLC'S ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT;  
COUNTERCLAIM OF DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC - 1

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1           4.       In response to Paragraph No. 1.6, Defendant admits that it operates a frozen food  
2 warehouse facility located in the Eastern District of Washington. Except as expressly admitted,  
3 Defendant denies each and every allegation contained in Paragraph No. 1.6.

4           5.       In response to Paragraph No. 1.7, Defendant denies that it has committed any  
5 tortious actions against Plaintiff in the Eastern District of Washington or otherwise.

6           6.       Paragraph No. 1.8 is a legal assertion which requires no response from Defendant.  
7 To the extent Paragraph No. 1.8 requires a response, Defendant denies that it has violated  
8 contract or tort law, or that it owes damages or any remedy to Plaintiff.

9           7.       Defendant lacks information and belief at this time sufficient to admit the  
10 allegations of Paragraph Nos. 1.9 through 1.11, inclusive, and on that basis denies each and  
11 every allegation contained in Paragraph Nos. 1.9 through 1.11.

12           8.       In response to Paragraph No. 2.1, Defendant re-alleges its responses to Paragraph  
13 Nos. 1.1 through 1.11, inclusive, as if set forth in full herein.

14           9.       Defendant admits the allegations contained in Paragraph Nos. 2.2 and 2.3.

15           10.      Defendant denies each and every allegation contained in Paragraph Nos. 2.4 and  
16 2.5.

17           11.      Paragraph Nos. 2.6 and 2.7 presume the existence of a contract between  
18 Defendant and Lamb Weston for track use by Lamb Weston or its agents, contractors, and  
19 assigns. Defendant denies that any such contract exists. Defendant asserts that the contracts  
20 between itself and Lamb Weston are “confidential” business documents with no bearing on this  
21 dispute.

22           12.      In response to Paragraph No. 2.8, Defendant denies that it entered into any  
23 contract with Lamb Weston or anyone for the use of tracks at Defendant’s facility in Richland,  
24 WA, before terminating the Agreement with Plaintiff because of Plaintiff’s violation of the  
25 Agreement.

26 DEFENDANT PREFERRED FREEZER SERVICES OF  
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DEFENSES TO PLAINTIFF’S AMENDED COMPLAINT;  
COUNTERCLAIM OF DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC - 2

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1           13. In response to Paragraph No. 2.9, Defendant admits that it acknowledged the  
2 Agreement and Amendment between Plaintiff and Defendant as “the only contract of relevance.”

3           14. Defendant admits the allegations of Paragraph Nos. 2.10 and 2.11.

4           15. Defendant lacks information and belief at this time sufficient to admit or deny the  
5 allegations contained in Paragraph Nos. 2.12 through 2.14, inclusive, and on that basis denies  
6 them.

7           16. Defendant denies each and every allegation contained in Paragraph Nos. 2.15 and  
8 2.16.

9           17. Paragraph No. 2.17 contains a statement of law which requires no response from  
10 Defendant. To the extent that Paragraph No. 2.17 requires a response, Defendant denies each  
11 and every allegation contained therein.

12           18. In response to Paragraph No. 2.18, the Agreement and Amendment speak for  
13 themselves on this issue. To the extent Paragraph No. 2.18 conflicts with the Agreement and  
14 Amendment, Defendant denies the allegations contained therein.

15           19. Defendant denies each and every allegation contained in Paragraph No. 2.19.

16           20. In response to Paragraph No. 3.1, Defendant re-alleges its responses to Paragraph  
17 Nos. 1.1 through 2.19, inclusive, as if set forth in full herein.

18           21. Paragraph No. 3.2 is a statement of law which requires no response from  
19 Defendant. To the extent Paragraph No. 3.2 requires a response, Defendant denies that Plaintiff  
20 is entitled to the relief sought herein.

21           22. In response to Paragraph No. 3.3, Defendant re-alleges its responses to Paragraph  
22 Nos. 1.1 through 3.2, inclusive, as if set forth in full herein.

23           23. Paragraph No. 3.4 is a statement of law which requires no response from  
24 Defendant. To the extent Paragraph No. 3.4 requires a response, Defendant denies that Plaintiff  
25 is entitled to the relief sought herein.

26 DEFENDANT PREFERRED FREEZER SERVICES OF  
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DEFENSES TO PLAINTIFF’S AMENDED COMPLAINT;  
COUNTERCLAIM OF DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC - 3

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1           24. In response to Paragraph No. 3.5, Defendant re-alleges its responses to Paragraph  
2 Nos. 1.1 through 3.4, inclusive, as if set forth in full herein.

3           25. Paragraph No. 3.6 is a statement of law which requires no response from  
4 Defendant. To the extent Paragraph No. 3.6 requires a response, Defendant denies that Plaintiff  
5 is entitled to the relief sought herein.

6           26. In response to Paragraph No. 3.7, Defendant re-alleges its responses to Paragraph  
7 Nos. 1.1 through 3.6, inclusive, as if set forth in full herein.

8           27. Paragraph No. 3.8 is a statement of law which requires no response from  
9 Defendant. To the extent Paragraph No. 3.8 requires a response, Defendant denies that Plaintiff  
10 is entitled to the relief sought herein.

11           28. In response to Paragraph No. 3.9, Defendant re-alleges its responses to Paragraph  
12 Nos. 1.1 through 3.8, inclusive, as if set forth in full herein.

13           29. In response to Paragraph No. 3.10, Defendant admits that the Agreement and  
14 Amendment existed prior to Defendant terminating it. Defendant denies that the agreement  
15 contains all required elements necessary for a valid and enforceable contract. Defendant denies  
16 the remaining allegations contained in Paragraph No. 3.10.

17           30. In response to Paragraph No. 3.11, Defendant admits that it had characterized the  
18 Agreement and Amendment as “the only contract of relevance”. Except as expressly admitted,  
19 Defendant denies each and every allegation contained in Paragraph No. 3.11.

20           31. In response to Paragraph No. 3.12, the Agreement and Amendment speak for  
21 themselves on this issue. To the extent the allegations in Paragraph No. 3.12 conflict with the  
22 Agreement and Amendment they are expressly denied.

23           32. In response to Paragraph Nos. 3.13 through 3.16, inclusive, Defendant denies  
24 each and every allegation contained therein.

25  
26 DEFENDANT PREFERRED FREEZER SERVICES OF  
RICHLAND, LLC’S ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF’S AMENDED COMPLAINT;  
COUNTERCLAIM OF DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC - 4

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1           33. In response to Paragraph No. 3.17, Defendant re-alleges its responses to  
2 Paragraph Nos. 1.1 through 3.16, inclusive, as if set forth in full herein.

3           34. Paragraph No. 3.18 is a statement of law which requires no response from  
4 Defendant. To the extent that Paragraph 3.18 seeks to extend the implied covenant of good faith  
5 and fair dealing beyond the four corners of the Agreement and Amendment, Defendant denies  
6 any and all such allegations. Defendant otherwise denies the allegations contained in Paragraph  
7 No. 3.18.

8           35. In response to Paragraph 3.19, Defendant acknowledges that Paragraph 13 of the  
9 Agreement addresses a duty of good faith and cooperation, the language of such will speak for  
10 itself. To the extent the allegations in Paragraph 3.19 conflict with the Agreement, they are  
11 expressly denied.

12           36. In response to Paragraph Nos. 3.20 and 3.21, Defendant denies each and every  
13 allegation contained therein, and denies that Plaintiff has been damaged by any actions of  
14 Defendant, as alleged.

15           37. In response to Paragraph No. 3.22, Defendant re-alleges its response to Paragraph  
16 Nos. 1.1 through 3.21, inclusive, as if set forth in full herein.

17           38. In response to Paragraph No. 3.23, the Agreement and Amendment speak for  
18 themselves on this issue. To the extent the allegations in Paragraph No. 3.23 conflict with the  
19 Agreement and Amendment, they are expressly denied.

20           39. In response to Paragraph Nos. 3.24 through 3.27, inclusive, Defendant denies  
21 each and every allegation contained therein, and any damages to Plaintiff.

22           40. In response to Paragraph No. 3.28, Defendant re-alleges its response to Paragraph  
23 Nos. 1.1 through 3.27, inclusive, as if set forth in full herein.

24           41. Paragraph No. 3.29 contains a statement of law which requires no response from  
25 Defendant. To the extent Paragraph No. 3.29 requires a response, Defendant admits that Plaintiff

26  
DEFENDANT PREFERRED FREEZER SERVICES OF  
RICHLAND, LLC'S ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT;  
COUNTERCLAIM OF DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC - 5

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1 has certain rights under the Agreement and Amendment, the language of which speak for  
2 themselves. To the extent the allegations in Paragraph 3.29 conflict with the language of the  
3 Agreement and Amendment, or seek to add additional language thereto, they are expressly  
4 denied.

5 42. In response to Paragraph Nos. 3.30 and 3.31, Defendant denies each and every  
6 allegation contained therein.

7 43. In response to the Relief Requested, Defendant denies that Plaintiff is entitled to  
8 any relief or recovery from it.

9 **AFFIRMATIVE DEFENSES**

10 By way of further answer, and without admitting any of the allegations set forth in the  
11 complaint, except as expressly admitted above, defendant further states and alleges:

12 1. Plaintiff's claims are barred, in whole or in part, because Plaintiff fails to state a  
13 claim upon which relief can be granted.

14 2. Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to  
15 mitigate its damages.

16 3. Plaintiff's claims are barred, in whole or in part, because Plaintiff seeks an  
17 improper advisory opinion.

18 4. Plaintiff's claimed damages, if any, are barred, in whole or in part, to the extent  
19 they were caused or contributed to by Plaintiff's own acts and omissions.

20 5. Plaintiff's claims are barred, in whole or in part, to the extent any recovery  
21 would be contrary to public policy.

22 6. Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff seeks  
23 damages that are not properly recoverable under the theories set forth in the Complaint.

24 7. Plaintiff's claims are barred, in whole or in part, to the extent they seek an  
25 interpretation of the Contract from the Court that is contrary to the Contract.

26 DEFENDANT PREFERRED FREEZER SERVICES OF  
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DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT;  
COUNTERCLAIM OF DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC - 6

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1           8.           Plaintiff's claims are barred, in whole or in part, to the extent they are barred by  
2 the applicable statute of limitation.

3           9.           Plaintiff's claims are barred, in whole or in part, because the contract alleged  
4 lacks all essential elements necessary for a valid and enforceable contract and the contract at  
5 issue is therefore void and unenforceable.

6           10.          Even assuming, *in arguendo*, that the contract at issue is valid, Plaintiff's  
7 claims are barred, in whole or in part, because Plaintiff failed to satisfy all its obligations under  
8 the Agreement and Amendment.

9           11.          Plaintiff's alleged damages, if any, were caused, in whole or in part, by  
10 actions and/or omissions of third parties that Plaintiff failed to name in this litigation.

11          12.          Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to  
12 join necessary parties, including third parties whose acts and/or omissions caused plaintiff's  
13 damages, if any.

14          13.          Defendant reserves the right to amend its Answer and to raise any and all  
15 additional affirmative defenses, counterclaims, and cross-claims which may be available to it  
16 under Washington law and in equity, pending the outcome of further investigation and discovery.

17                               **COUNTER-CLAIM**

18          Defendant/Counter-Claimant, Preferred Freezer Services of Richland, LLC ("Counter-  
19 Plaintiff"), states and alleges its Counter-Claims against Plaintiff/Counter-Defendant Tri-City  
20 Railroad Company, LLC ("Counter-Defendant"), as follows:

21                               **I.       PARTIES AND JURISDICTION**

22          1.          Tri-City Railroad Company, LLC ("Counter-Defendant") is a Washington limited  
23 liability company conducting business in Richland, Washington.

24          2.          Preferred Freezer Services of Richland, LLC ("Counter-Plaintiff") is a Delaware  
25 limited liability company doing business in Richland, Washington.

26 DEFENDANT PREFERRED FREEZER SERVICES OF  
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DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT;  
COUNTERCLAIM OF DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC - 7

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1           3.     The acts and omissions that are alleged herein took place in Richland,  
2 Washington.

3           3.     Assuming jurisdiction for Plaintiff's claims, this Court has jurisdiction pursuant to  
4 28 U.S.C. § 1331 and § 1332.

5           4.     Assuming venue is appropriate for Plaintiff's claims, venue is proper in the  
6 Eastern District of Washington under 28 U.S.C. § 1391(b) and (c).

7                               **II.     RELEVANT FACTS**

8           3.     Counter-Defendant and Counter-Plaintiff executed a Rail Service Management  
9 and Track Use Agreement on January 22, 2016 in Richland, Washington (the "Agreement").

10          4.     Section 3 of the Agreement (attached to Plaintiff's complaint) identifies various  
11 duties of Counter-Defendant including, but not limited to, management and control of all railcar  
12 activities at Counter-Plaintiff's Richland, Washington facility to achieve efficient rail operation,  
13 including loading and unloading of railcars.

14          5.     Counter-Defendant failed to perform its duties under Section 3 of the Agreement,  
15 creating an adverse flow of rail car traffic at Counter-Plaintiff's facility.

16          6.     Following unsuccessful attempts by Defendant to address the dispute between  
17 Counter-Plaintiff and Counter-Defendant with respect to the management and control of the  
18 railcar activities at its Richland facility, Counter-Plaintiff terminated the Agreement and  
19 Amendment on February 5, 2019.

20          7.     Counter-Plaintiff has been damaged by Plaintiff's breach of its duties under the  
21 Agreement and the resulting termination thereof, in an amount to be determined at trial.

22          8.     Counter-Plaintiff has satisfied its obligations under the Agreement.

23                               **COUNTER-CLAIM – BREACH OF CONTRACT**

24          11.    Counter-Plaintiff repeats and re-alleges the foregoing paragraphs of its Counter-  
25 Claims, as though fully set forth herein.

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DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT;  
COUNTERCLAIM OF DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC - 8

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1 12. Counter-Plaintiff and Counter-Defendant executed an Agreement.

2 13. Counter-Defendant failed to satisfy its obligations under the Agreement.

3 14. Counter-Defendant's failure to satisfy its obligations under the Agreement  
4 constitutes a breach of the Agreement.

5 15. Counter-Plaintiff performed all of its obligations under the Agreement.

6 16. Counter-Defendant's breach has caused damage to Counter-Plaintiff, in an  
7 amount to be determined at trial.

8 **COUNTER-PLAINTIFF'S PRAYER FOR RELIEF**

9 WHEREFORE, Counter-Plaintiff requests the following relief:

10 1. That Counter-Defendant's claims against Counter-Plaintiff be dismissed with  
11 prejudice and without costs;

12 2. That Counter-Plaintiff be awarded its damages on its counterclaims;

13 3. That Counter-Plaintiff be awarded its costs and reasonable attorney's fees herein;

14 4. That Counter-Plaintiff be indemnified and held harmless from any claims made  
15 by or on behalf of Counter-Defendant based on contribution, apportionment and/or  
16 indemnification; and

17 5. That Counter-Plaintiff be granted such other relief as this Court may deem just  
18 and proper.

19 DATED this 22<sup>nd</sup> day of February, 2019.

20 GORDON & REES SCULLY  
21 MANSUKHANI, LLP

22 /s/ Mark B. Tuvim

23 Mark B. Tuvim, WSBA No. 31909  
24 Attorneys for Defendant Preferred Freezer  
25 Services of Richland, LLC  
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26 DEFENDANT PREFERRED FREEZER SERVICES OF  
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COUNTERCLAIM OF DEFENDANT PREFERRED FREEZER  
SERVICES OF RICHLAND, LLC - 9

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this date I filed the foregoing document with the Clerk of the Court which sent an automatic CM/ECF email to all counsel of record as listed below:

**Attorney for Plaintiff**

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Dated this 22nd day of February 2019.

/s/ Angela M. Kendrick

Angela M. Kendrick

CERTIFICATE OF SERVICE – 1

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